

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

**APRIL HEARD and as Parent and Next
friend of D.H., a minor,**

Plaintiffs,

V.

**MONIQUE THOMAS individually and
SHELBY COUNTY SCHOOLS a/k/a
SHELBY COUNTY BOARD OF
EDUCATION,**

Defendants.

Case No.: 2:20-cv-2335

Removed From:
30th Judicial District at Memphis
Docket No. CT-1329-20, Div. III

NOTICE OF REMOVAL

Defendant Shelby County Board of Education, the governmental entity that governs Shelby County Schools (“SCBE”), by and through undersigned counsel and pursuant to 28 U.S.C. §§ 1441 and 1446, files this Notice of Removal removing this action from the Circuit Court of Shelby County, Tennessee, Case No. CT-001329-20, where it is currently pending, to the United States District Court for the Western District of Tennessee, Western Division. This cause is removable pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, in that the claims of Plaintiffs April Heard and as Parent and Next Friend of D.H., a minor (“Plaintiffs”) raise questions under Federal law including claims for alleged civil rights violations brought pursuant to 42 U.S.C. § 1983. In support of removal, SCBE respectfully states as follows:

BACKGROUND AND PROCEDURAL HISTORY

1. Plaintiffs are residents of Shelby County, Tennessee [Complaint, ¶ 1].
2. Defendant Shelby County Board of Education is a governmental agency located in

Shelby County, Tennessee. [Complaint, ¶ 3].

3. Defendant Monique Thomas (“Thomas”) a resident of Shelby County, Tennessee. [Complaint, ¶ 2].

4. Plaintiff instituted this civil action in the Circuit Court of Shelby County, Tennessee (“Circuit Court”) on March 24, 2020, claiming a cause of action under 42 U.S.C. S 1983 arising from Plaintiffs allegations that Defendants violated Plaintiff D.H.’s rights under the United States Constitution. [Complaint, ¶¶ 28d, 28e, & 28f]. A true and correct copy of the Complaint filed with the Circuit Court is attached as Exhibit A and is incorporated herein by reference.

5. Counsel for Defendant SCBE accepted service of the summons and Complaint on behalf of SCBE on April 17, 2020. True and correct copies of the Summons to SCBE and Return of Service filed with the Circuit Court are attached as Exhibit B.

6. Upon information and belief, Defendant Thomas has not been served with a summons or the Complaint. A true and correct copy of the Summons to Defendant Thomas filed with the Circuit Court is attached as Exhibit C. No Return of Service for Defendant Thomas has been filed with the Circuit Court.

7. Pursuant to 28 U.S.C. §1446(d), a copy of this Notice of Removal will be filed with the Circuit Court of Shelby County and written notice will be provided to Plaintiffs and to Defendant Thomas at the address identified by Plaintiffs in the Complaint, along with a copy of this Notice of Removal.

REMOVAL IS PROPER UNDER 28 U.S.C. § 1441

8. The United States District Court for the Western District of Tennessee is the federal judicial district embracing the Circuit Court of Shelby County, Tennessee, where this suit was originally filed. Venue is therefore proper under 28 U.S.C. §§ 123(c)(2) and 1441(a).

9. Pursuant to 28 U.S.C. § 1331, this court has original subject matter jurisdiction over this civil action because Plaintiff alleges violations of Federal law, including claims for alleged civil rights violations brought pursuant to 42 U.S.C. § 1983.

10. Consequently, this civil action is properly removed pursuant to 28 U.S.C. § 1441(a).

11. The entire action is removable, as this Court also has jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367(a), which provides "in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." The state law claims asserted in Plaintiffs' Complaint arise from the same set of alleged facts as the claims brought pursuant to federal law. Thus, this Court has supplemental jurisdiction over the state law claims in the action.

NOTICE OF REMOVAL IS TIMELY FILED UNDER §1446(b)

12. "The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter." 28 U.S.C. §1446.

13. The Plaintiffs' Complaint, which raises questions under Federal Law, indicates on its face that it was filed March 24, 2020 with the Circuit Court of Shelby County, Tennessee. SCBE did not receive a copy of the Complaint until April 17, 2020 when its attorney accepted

service on behalf of SCBE [*See* Exhibit B.] Therefore, this Notice is timely filed within thirty days of SCBE's receipt of the Complaint, as provided in 20 U.S.C. §1446(b).

NON-WAIVER OF DEFENSES

14. By removing this action from the Circuit Court of Shelby County, Tennessee, SCBE does not waive any defenses available to it.

15. By removing this action from the Circuit Court of Shelby County, Tennessee, SCBE does not admit any of the allegations in Plaintiffs' Complaint.

WHEREFORE, PREMISES CONSIDERED, Defendant SCBE, by and through undersigned counsel, desiring to remove this civil action to the United States District Court for the Western District of Tennessee, Western Division (being the district and division for the county in which such civil action is pending), pray that the filing of this Notice of Removal, the giving of written notice thereof to Plaintiffs, and the filing of a copy of this Notice of Removal with the clerk of the Circuit Court of Shelby County, Tennessee, shall effect the removal of said civil action to this Honorable Court.

Respectfully submitted, this the 8th day of May, 2020.

By: s/ Jamie L. Morton
Jamie L. Morton (TN BPR #31243)
Shelby County Board of Education
Office of the General Counsel
160 S. Hollywood Street, Coe Room 218
Memphis, Tennessee 38112
Phone: (901) 416-6373
mortonj2@scsk12.org

Counsel for Shelby County Board of Education

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served via U. S. Mail, postage prepaid, this

8th day of May, 2020 to:

James E. King, Jr., Esq.
Eric E. Lindquister, Esq.
Eskins, King & Marney PC
200 Jefferson, Suite 1510
Memphis, Tennessee 38103
(also by email to jking@eskinsking.com)

Monique Thomas
4080 Kirby PKWY
Memphis, TN 38115

Counsel for Plaintiffs

s/ Jamie L. Morton
Jamie L. Morton